

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

NICHOLAS COULOUTE and APRIL	:
COULOUTE,	:
Plaintiffs,	:
	:
-vs-	: Civil No. 3:02cv1755 (PCD)
	:
WILLIAM P. SAWYER, <i>et al.</i> ,	:
Defendants.	:

RULING ON DEFENDANTS' MOTION TO DISMISS AND FOR SANCTIONS

Defendants move to dismiss the complaint and for sanctions pursuant to FED. R. CIV. P. 11.

For the reasons set forth herein, defendants' motion to dismiss is **granted** and the motion for sanctions is **denied**.

I. BACKGROUND

On September 24, 2001, plaintiff April Couloute filed a *pro se* complaint against defendants Mercury Mortgage Co. ("Mercury"), Hunt, Leibert, Chester & Jacobson, P.C. ("Hunt"), the State of Connecticut and the Connecticut Appellate Court alleging that defendants violated her rights under the First and Fourteenth Amendments through their conduct in pursuing a foreclosure in Connecticut state courts. Mercury held the promissory note and mortgage on the subject property and Hunt represented Mercury in state foreclosure proceedings. The complaint was initially dismissed for failure to allege state action. Plaintiff filed an amended complaint adding the State of Connecticut and Connecticut Appellate Court, which complaint failed to cure defects in the original complaint and was again dismissed *sua sponte* as frivolous on February 17, 2002. On June 17, 2002, plaintiff filed a notice of appeal from the ruling dismissing the complaint. There is no indication that the appeal has been

resolved.

On October 2, 2002, plaintiff filed a second action *pro se*, this time joined by Nicholas Couloute, alleging substantially the same violations of 42 U.S.C. § 1983, the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* (federal question, 15 U.S.C. § 1640(e)), the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et seq.*, Connecticut's Unfair Trade Practices Act, CONN. GEN. STAT. § 42-110a *et seq.*, 18 U.S.C. § 1341 and 42 U.S.C. § 1982, and common law claims of fraud, negligence, breach of contract.

II. DISCUSSION

Plaintiff April Couloute pressed substantially the same claims against defendant Hunt in her first action. As plaintiff appealed from the judgment dismissing the case and has provided no evidence that an appeal is no longer pending in the Second Circuit Court of Appeals, claims against Hunt are dismissed with prejudice for lack of jurisdiction to modify collaterally a decision that is the subject of a pending appeal.

The only potentially viable claim in the list of legal theories provided by plaintiffs in the present complaint are the common law claims alleging fraud and negligence against defendant Sawyer. The claims are potentially viable because there is diversity of citizenship, *i.e.*, defendant Sawyer is not a resident of Connecticut, plaintiffs are residents of Connecticut. However, the allegations are not sufficient to determine whether the claims are meritorious, and the claim of fraud does not approach the level of particularity required by FED. R. CIV. P. 9(b).

If plaintiffs opt to disregard the rulings of this Court by alleging patently frivolous constitutional violations against private actors, claims that were extensively discussed and dismissed in two prior

rulings by this Court on substantively identical claims, plaintiff is forewarned, *pro se* or otherwise, that civil actions may not be used for purposes of harassment and such abuse may very well result in a monetary award against plaintiffs. A *pro se* plaintiff is subject to sanctions, including defendant's attorneys' fees incurred in defending against a frivolous action. *See Sassower v. Field*, 973 F.2d 75, 8081 (2d Cir. 1992). Filing claims against the same party after their claims have been dismissed in a prior action as without legal and/or factual merit, as in the present case, may result in monetary sanctions. *See id.*; FED. R. CIV. P. 11.

With this admonition, defendant's motion to dismiss (Doc. No. 13) is **granted**. Plaintiffs are granted leave to file an amended complaint within thirty days of the date of this ruling. In light of the additions and deletions of parties from the former action, it is not apparent that the complaint was filed for purposes of harassment. No sanctions will be awarded at this time.

SO ORDERED.

Dated at New Haven, Connecticut, February ___, 2002.

Peter C. Dorsey
United States District Judge